

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UNITED STATES OF AMERICA,
Petitioner,
v.
JOSE HERNANDEZ,
Respondent.

Case No. 17-cv-00040-BLF

**ORDER CONTINUING SHOW CAUSE
HEARING RE MOTION FOR
ISSUANCE OF BENCH WARRANT TO
NOVEMBER 29, 2018 AT 9:00 AM;
AND SETTING DEADLINES FOR
RESPONDENT'S COMPLIANCE**

Petitioner United States of America commenced this action on January 5, 2017 when it filed a Petition to Enforce Internal Revenue Service Summons, seeking to require Respondent Jose Hernandez to comply with his obligations to provide documents and give testimony. *See* ECF 1. The Court granted the Petition on April 10, 2017, and on April 12, 2017 the Court issued an order requiring Dr. Hernandez to appear before the Internal Revenue Service to provide documents and give testimony. *See* ECF 13, 16.

On June 7, 2017, the Court issued an Order to Show Cause Re: Contempt, requiring Dr. Hernandez to appear before the Court and show cause why he should not be held in contempt for failing to comply with the Court's orders to provide documents and testimony. *See* ECF 22. More than a year later, the United States is still trying to obtain the ordered documents and testimony from Dr. Hernandez. The Court issued an order finding Dr. Hernandez in civil contempt based on his failure to comply with the Court's orders and imposing a fine of \$50 per day beginning March 29, 2018. *See* ECF 36.

When the contempt order did not result in Dr. Hernandez's compliance, the United States moved for issuance of a bench warrant for Dr. Hernandez's arrest. *See* ECF 38. On May 25, 2018, the Court issued an Order to Show Cause, directing Dr. Hernandez to appear before the Court on June 21, 2018 to show cause why the Court should not grant the United States' motion

1 for issuance of a bench warrant. *See* ECF 41. Dr. Hernandez appeared on June 21, 2018 and
2 represented that he would comply. The Court continued the hearing on the Order to Show Cause
3 and the Government's motion to September 27, 2018, at 9:00 a.m., to give Dr. Hernandez an
4 opportunity to provide all required materials to the United States. *See* ECF 45. The Court stated
5 that if Dr. Hernandez complied fully, the United States could withdraw its motion for issuance of a
6 bench warrant and the Court would discharge the Order to Show Cause. *Id.*

7 On September 27, 2018, Dr. Hernandez appeared before the Court and stated that he had
8 not yet complied with his obligations to provide documents and testimony because he was still
9 attempting to gather the relevant documents. The United States' counsel represented that he had
10 attempted to contact Dr. Hernandez via telephone and letter but that Dr. Hernandez had not
11 communicated with the United States since the last hearing before the Court on June 21, 2018.
12 After colloquy with Dr. Hernandez and counsel for the United States, the Court decided to grant
13 Dr. Hernandez one final opportunity to comply, and made the following orders on the record:

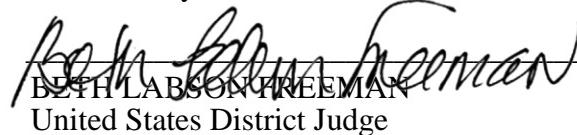
14 (1) Dr. Hernandez SHALL personally produce to the United States all responsive
15 documents in his possession on September 27, 2018, at 2:00 p.m., at 90 South White Road, San
16 Jose, California.

17 (2) Dr. Hernandez SHALL personally produce to the United States all remaining
18 responsive documents on October 29, 2018, at 2:00 p.m., at 90 South White Road, San Jose,
19 California.

20 (3) Dr. Hernandez SHALL personally appear for an interview, for the purpose of
21 providing testimony to the United States, on November 14, 2018, at 10:30 a.m., at 90 South White
22 Road, San Jose, California.

23 (4) The Show Cause Hearing regarding the United States' motion for issuance of a
24 bench warrant is CONTINUED to November 29, 2018, at 9:00 a.m., in Courtroom 3, 5th Floor,
25 United States District Court, 280 S. First Street, San Jose, California. If by that date Dr.
26 Hernandez has not complied with the Court's orders, he may be incarcerated.

27 Dated: September 27, 2018


BETH LABSON FREEMAN
United States District Judge